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**APR 26 2007**

**OFFICE OF PETITIONS**

In re Application of :  
Johan R. De Faire et al :  
Application No. 09/549,642 : **DECISION ON PETITION**  
Filed: April 14, 2000 : **UNDER 37 CFR 1.182**  
Attorney Docket No. 314572-101F :

This is a decision on the petition under 37 CFR 1.182, filed January 12, 2007, requesting entry of an amendment to the specification to insert a reference to earlier-filed applications pursuant to the provisions of 35 U.S.C. §§120 and 365(c) for the benefit of priority to the prior-filed applications set forth in the concurrently filed amendment.

The petition is **DISMISSED**.

The above-noted abandoned application failed to make a specific reference to the prior-filed applications; prior to abandonment. Petitioner now requests that the abandoned application be amended by inserting a reference to the earlier-filed applications. The petition is accompanied by an amendment to include a reference to the prior-filed applications in the first line of the specification following the title of the invention.

35 U.S.C. § 120 permits entry of a subsequent amendment to an abandoned application in applications filed prior to November 29, 2000 to include the benefit of an earlier filed date for purposes other than prosecution. See Sampson v. Commissioner for Patents and Trademarks, 195 USPQ 136 (DC DC 1976).

However, any nonprovisional application claiming the benefit of one or more prior-filed copending nonprovisional applications must contain or be amended to contain a reference to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) and indicating the relationship of the applications. The relationship between the applications is whether the subject application is a continuation, divisional, or continuation-in-part of a prior-filed nonprovisional application. An example of a proper benefit claim is: "This application is a continuation of Application No. 10/---, filed---." A benefit claim that merely states: "This application claims the benefit of Application No. 10/---, filed---," does not comply with 37 CFR 1.72(a)(2)(i) since the proper relationship, which includes the type of

continuing application, is not stated. Also, the status of each nonprovisional parent application (if it is patented or abandoned) should also be indicated, following the filing date of the parent nonprovisional application. *See* MPEP Section 201.11, Reference to Prior Nonprovisional Applications. The amendment fails to comply with the above and is therefore unacceptable.

Before the petition under 37 CFR § 1.182 can be granted, a renewed petition under 37 CFR § 1.182 and a proper amendment, which states the relationship of the prior-filed applications to this application, are required.

Further correspondence with respect to this matter should be addressed as follows:

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Any questions concerning this matter may be directed to the undersigned at (571) 272-3208.



Karen Creasy  
Petitions Examiner  
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